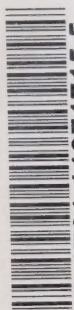


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A CANADIAN HUMAN RIGHTS AGENDA FOR THE 90's

A Brief Submitted

by

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to

Standing Committee on Human Rights
House of Commons

OTTAWA

April 20, 1988

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I OBJECTIVE: BACK TO BASICS

The fundamental objective and guiding thrust of our human rights agenda during the next decade must be a return to the basics of human rights.

My experience leads me to this conclusion that we need to return to our original foundation as to the cement of human rights and the basic building blocks of human rights as applicable in the world community.

My analysis of the human rights phenomenon leads me to consider six issues:

1] The Basic Principles

Three basic principles are involved in such a return to basics in human rights:

i] The ongoing "recognition of the inherent dignity of all members of the human family"

ii] The ongoing "reaffirmation by Canadians of our faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women

iii] The ongoing "determination to promote social progress and better standards of life in larger freedom".

2.] The Basic Instruments

A back to basics in human rights means a return to the International Bill of Human Rights, that is:

- i] The Universal Declaration of Human Rights
- ii] The International covenant on Economic, Social and Cultural Rights
- iii] The International Covenant on Civil and Political Rights
- iv] The Optional Protocol.

It is here where we stand on solid ground in the articulation of what human rights are. These are human rights, universally recognized, notwithstanding the great variation in political philosophy, ideologies, political systems and approaches to the justification of human rights. It is here that we have the basic and fundamental standard of human rights for Canadians, since Canada is a signatory of the Universal Declaration and has ratified the covenants. [It is also here where the constitutional process of the early 80's failed to use the federal-provincial agreement to ratify the covenants in 1976 as a basis for the Charter.] It is also here where a resolution of the concerns of many Canadians with the Meech Lake proposed constitutional amendment could be eased through adding a preambular paragraph recalling the 1976 agreement to ratify the covenants].

3] The Basic Categories of Human Rights

A return to the basics of human rights is a return to the recognition of the three different categories or generations of human rights which, in turn, help us to respond appropriately to these differences:

- i] Self-executory Rights - that is the civil and political rights
- ii] Programmatic Rights - that is the economic, social and cultural rights
- iii] New Generation of Rights - the solidarity and ecological rights.

4] Institutions

Back to basics in human rights means a return to the three main institutions which exist for the promotion, development and protection of human rights:

- i] The courts and administrative tribunals
- ii] The legislative institutions
- iii] The voluntary or non-governmental organizations.

5] Obstacles or Barriers

Two of the principle obstacles or barriers to getting back to the basics of human rights are: a) the Bureaucratization of Human Rights and b) the Politicization of Human Rights

a) Bureaucratization of Human Rights has become a problem which we need to be alert to or at least aware of if the Canadian Human Rights Agenda for the 90's is to have any chance of being articulated, let alone implemented.

What I am referring to by the bureaucratization of human rights is the phenomenon of the dynamics of the bureaucracy becoming more important than the dynamics of the given public programme. Based on my experience, the Bureaucrats who work in the Human Rights Field are no different when it comes to spending as much energy on political maneuvering within the system as they spend on promoting human rights.

One has to be concerned with what I hear said among colleagues from outside of the Ottawa-Toronto-Montreal axis when they refer to the human rights bureaucratic "Mafia".

I would ask that this committee examine very carefully those new initiatives for human rights development which emanate from the bureaucracy to ensure that they are substantive and not principally motivated by a systems desire of expanding a unit. The committee should also vet the senior human rights appointment made by the Government of Canada.

I would ask that this committee examine very carefully the budget estimates of those departments of the government which have human rights programmes. If my information is correct, the Department of the Secretary of State is proposing to cut its human rights budget significantly -- and this in the year when we mark the 40th anniversary of the Universal Declaration of Human Rights.

b) Politicization of Human Rights has both a plus side and a minus side -- the plus side is that to the extent that human rights issues are politicized these issues receive attention. The down side is that the programmatic nature of those rights such as economic, social and cultural rights, may lend themselves to politicization - the civil and political rights do not.

The politicization of human rights at the United Nations has caused a great deal of problems for the universal effort to promote human rights, however I believe that there is a sense among many members of the United Nations of the importance to the United Nations itself to return to basics in human rights, this being especially important as the world community attempts to deal with new proposals for human rights, especially the collective rights and solidarity rights such as the right to development and the right to peace. In this regard, I believe that the Standing Committee on Human Rights should ensure that Canada's position at the United Nations in the area of human rights be one of leadership, vision and one which gives direction. In order to do this, it is important that our approach on international human rights issues be not motivated principally by political considerations but, rather be motivated and shaped by a human rights vision which rests solidly on the International Bill of Rights.

There is a practical need for the Department of External Affairs to improve the allocations for the Permanent Mission of Canada at the United Nations Office in Geneva. This is especially critical if Canada, which is expected to be elected to the United Nations Human Rights Commission, is going to be creative and show vision and leadership in setting the international human rights agenda for the 90's.

II AGEISM: Elements of the Struggle to Promote the Human Rights of Canadians in Freedom From Discrimination Because of Age

In light of the foregoing reflection on the elements that need to be considered in setting the Canadian Human Rights Agenda for the 90's -- How would this relate to the struggle to combat age discrimination?

First and foremost in my mind is the need to clearly state, as a matter of public policy in Canada, that Canadian society recognizes, reaffirms and is determined to promote the inherent dignity and value of all Canadians irrespective of chronological age:

- 1] Civil and Political Rights - for example, the right to life, liberty and security of person [Art. 3 UDHR] needs to be monitored in all the various settings in which elderly

Canadians find themselves. One needs to be vigilant in the area of elder abuse, estate control, diminished responsibility, etc.

2] Economic, Social and Cultural Rights - this is where there is so much work to be done in Canada. The work can be facilitated once we all recognize the programmatic nature of these rights.

This distinguished standing committee of the House of Commons has already received a number of important interventions outlining the need to develop job-training, job-enhancement, job-mobility programmes for the older worker. You are aware of the housing needs of the elderly in Canada. The whole area of social security needs ongoing attention.

3] Equality Rights - Age Discrimination - Age discrimination, which is widespread in Canada, affects Canadians of all ages, but has particular adverse impact on that segment of the population over the age of 65. In my view, one of the most offensive forms of age discrimination has been the "acquired" practice of mandatory retirement.

Mandatory retirement policies which have been enacted in the past one-half century need to be taken down. In New Brunswick, as in the province of Manitoba, the Human Rights Codes proscribe discrimination because of "age" - and age is defined as the age of majority and over.

Unfortunately, it will not be New Brunswick or Manitoba which will set the 'de facto' standard in Canada - rather it is the Federal Government. -- Again, unfortunately, the Canadian Human Rights Act, pursuant to Section 14, permits age discrimination in the matter of retirement.

Human Rights Institutions for the Aged

There are three principle institutions in society which can serve to promote and protect the human rights of the aged. These institutions are:

- 1) the courts and tribunals,
- 2) the legislative bodies, and
- 3) the voluntary sector.

Firstly, the rights of persons to be free from unwarranted interference can be successfully ensured by effective use of the courts and various administrative tribunals. The use of the courts to advance through litigation the rights of the elderly can find encouragement from the successful experience during the days of the civil rights movement in the United States. A number of areas of contacts between the right of the aged and the remedy available only through the courts can be indicated. For example, using the courts to protect the freedom of elderly persons from the unjust use of Mental Health legislation to have elderly persons stripped of their basic civil and political rights. The human rights commissions are examples of administrative tribunals

which can provide relief from discrimination on the basis of age in such areas as housing, public services, contracts and employment.

The second principle institution for the promotion and protection of the rights of persons irrespective of age are the legislative bodies, namely Parliament, the Legislative Assembly and Municipal governments. The rôle of parliamentary committees, such as this Standing Committee, is an excellent example of the promotional rôle played by Parliament for the enhancement of the rights of the elderly. Equally critical are the enactments of required legislation at the various levels of jurisdictions to meet the needs of the elderly including the enactment of affirmative action programmes for the elderly.

The third, and in many ways the most important institution available for the promotion of the rights of the elderly, are the voluntary organizations. It is within the non-governmental organizations where the proverbial "grey power" can be very effective. The skill of lobbying and the strategy developed by interest groups can be applied by the voluntary sector which has the rights of the elderly as their goal.

The Right to Participate

Not only is it important to have the participation of the senior citizen in the decision making process effecting public affairs, indeed the senior citizen has the right to participate.

Article 25 of the United Nations Covenant on Civil and Political Rights, to which Canada is obliged under international law provides:

"Every citizen shall have the right and the opportunity without unreasonable restrictions to take part in the conduct of public affairs directly or through freely chosen representatives."

The idea that all people should have the right to participate in public affairs and in the decisions which affect them, in and by itself meets with little objection. It represents, after all, the fulfillment of the very concept of democracy. What might, however, create considerable difficulty could be the tactics adopted by seniors if they are excluded from the decision making process. While one does not envisage sit-ins, wade-ins, pray-ins, freedom rides, seizing and occupying public and private property, conducting mass demonstrations and economic boycotts, shouting obscenities at public meetings, blocking and obstructing buildings and highways, destroying computers, bombings and kidnappings - all of which have occurred in Canada - I do believe that seniors will find their way of protest if they are excluded from decision making. Some form of pressure will be divined and used if reason fails to be an effective form of social persuasion.

A Powerful Hand in a Velvet Glove

Let us now turn to the matter of strategy and the right to participate in the conduct of public affairs without discrimination because of age.

I think that Yhetta Gold placed her finger on the right spot when she stated at the close of the National Conference in October, 1983: "Older persons must become a real political force if they want to be listened to and heard."

It would be useful for political officials to realize that in 1980 there were 2.3 million Canadians 65 and over, about 10 percent of the population. Statistics Canada's projections for the turn of the century indicate an increase to 3.4 million or 11 percent, and these will increase to at least 5.5 million or 16 percent by 2020 when most of the baby-boom generation will have reached 65. A further increase to 6 million in the next two decades will bring Canada's older population to 20 percent.

This powerful hand can be played by making governments realize that they are there to listen and not there to tell older persons what the senior citizen is to think and what style of life he or she is to adopt.

The individual group of citizens can effect a good deal of change by organizing themselves to seek an elimination to the red tape that all too often makes understanding government and their programmes almost impossible, and effectively inaccessible.

Participation at all Levels of Government

Seniors participation applies to all levels of government, social agencies and senior centres. No longer is it acceptable to look upon older persons as consumers of services rather than as partners in the action.

Acceptance of seniors as partners in the decision-making process requires re-educating of politicians, civil servants, professionals and, yes, of the older persons themselves.

The on-going relationship of senior citizens to government is a major aspect of the total scene. Whether federal, provincial or local, governments must decide what kinds and how much support are to be assured for older persons. In Canada, these decisions have been part of the democratic process: social needs and injustices are brought into public discussion and, at some point, governments take notice and act. That process must continue to function and be encouraged; it is the way to improve the lot of the aging.

Assurance of support in those aspects of living which the older person is not always able to provide for must be the responsibility of government. This need for government intervention is an outcome of the industrial economic base of our Canadian society.

There are strong opinions about the relationships of older persons to government, and about federal-provincial government relationships. Most prefer that older persons not be dependent in any way on government or on agencies. This attitude is in keeping with the ethic of our pioneer period of development; it is the ethic of self-reliance and independent enterprise. However, government intervention today is essential when there is need for appropriate support which cannot be provided, as well as in other ways.

Whether this intervention will take place depends on the effectiveness of seniors to exercise political power.

Participation to Strengthen Canadian Democracy

The participation by seniors in the exercise of political power as a voluntary institution will have the net effect of strengthening democracy in Canada. This is posited because of the nature of the Canadian Charter of Rights and Freedoms and the possibility which exists in Article 33 for legislatures or parliaments to pass laws contrary to certain human rights. It seems to me that senior citizens, who will soon constitute 20 percent of the Canadian population, along with other voluntary groups, shall become the main bastion of our freedoms.

Governments will not pass laws contrary to our Charter of Rights and Freedoms if the legislators know that the people will reject the same.

Furthermore, all citizens must watch government, especially in times of restraint and entrenchment, when social support programmes are questioned. As Senator Claude Pepper of Florida once said about his own Country - "The Administration is trying to make Social Security a no-frills program. The problem is that their idea of a frill is eating."

Human Rights Instruments of the Aged

Within the Canadian context there are three major human rights instruments or laws which can be used by persons who seek to protect and promote the rights of the citizen irrespective of chronological age. These are:

- 1) The Canadian Charter of Rights and Freedoms,
- 2) The Provincial and Federal Human Rights statutes,
- 3) International Human Rights Instruments.

1. The first human right instrument applicable to all Canadians as an integral part of the Constitution of Canada is the Charter of Rights and Freedoms. The human rights listed in the charter are divided into seven categories:

- i) -fundamental freedoms such as life, liberty, security of person, freedom of religion, expression and freedom of the press;
- ii) -democratic rights ensuring that every citizen has the right to vote in an election;
- iii)-mobility rights guaranteeing that every citizen has the right to enter, remain or leave Canada and to move from province to province;
- iv) -legal rights protecting us against unreasonable search and seizure, arbitrary detention and ensuring our right to counsel and that we are presumed innocent until proven guilty;
- v) -equality rights guaranteeing that every individual regardless of race, religion, sex, age or mental or

physical disability is equal before and under the law;
vi) -ensuring that English and French are the official
languages of Canada and requiring their use in
Parliament and in the courts; and

vii)-English to be given education in primary and secondary
schools in that language.

The question of age and equality rights, democratic rights
and the fundamental rights of security of person and liberty are
underscored.

Equality Rights

Section 15 of the Charter addresses equality rights and
explicitly provides for the proscription of discrimination
because of age.

15. (1) Every individual is equal before and under
the law and has the right to the equal protection
and equal benefit of the law without discrimination
and, in particular, without discrimination based on
race, national or ethnic origin, colour, religion,
sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law,
program or activity that has as its object the
amelioration of conditions of disadvantaged individuals
or groups including those that are disadvantaged
because of race, national or ethnic origin, colour,
religion, sex, age or mental or physical disability.

It is important to note that Section 15 (1) guarantees
a) equality before the law, b) equality under the law, c) equal
protection of the law and d) equal benefit of the law without
discrimination, and in particular, without discrimination because
of age.

With reference to liberty, one may raise concerns with reference to freedom within care settings, whether nursing homes, hostels or at home with family members.

Security of person and the right thereto for the elderly citizen also raises some major questions.

2. The Provincial and Federal Human Rights Statutes

The second major human rights instruments available in Canada for use in the struggle against agism are the various provincial and the federal human rights legislation.

The anti-age discrimination provisions of the New Brunswick Human Rights Code apply to the areas of employment, accommodations, services, contracts and conveyances. Currently, most attention is given to age discrimination in the employment setting.

"2 In the Act

"age means nineteen years of age and over;..."

"3(1) No employer, employer's organization or other person acting on behalf of an employer shall

(a) refuse to employ or continue to employ any person

or

(b) discriminate against any person in respect of employment or any term or condition of employment, because of race, color, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex."

3(5) Notwithstanding subsections (1), (2), (3) and (4), a limitation, specification or preference on the basis of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex shall be permitted if such limitation, specification or preference is based upon a bona fide occupational qualification as determined by the Commission.

Democratic Rights

The Charter provides for the right to vote to citizens,
Section 3:

"Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

One needs to take note of those situations and circumstances where the right to vote is interfered with in respect to elderly citizens. While there may be some cases where it is appropriate to limit an elderly person, it is always critical that such a limitation not only be 'bona fide' but done in a manner which meets the limiting test of section one of the Charter. Namely, not done arbitrarily, but only in accordance with "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Fundamental Rights

It is Section 7 of the Charter which provides for fundamental rights:

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

A large number of issues can be identified concerning the elderly and the right to life, liberty and security of the person. With reference to the right to life, the whole area of health care needs to be examined. Questions from life support systems, death with dignity and euthanasia need to be explored.

3(6) The provisions of subsections (1), (2), (3) and (4) as to age do not apply to

- (a) the termination of employment or a refusal to employ because of the terms or conditions of any bona fide retirement or pension plan;
- (b) the operation of the terms or conditions of any bona fide retirement or pension plan that have the effect of a minimum service requirement; or
- (c) the operation of terms or conditions of any bona fide group or employee insurance plan.

Nature of Age Discrimination

The aforementioned sections of the Human Rights Code provide that decisions concerning employment and services etc. shall be based on "bona fide" considerations that are functionally relevant, and that a person will not be excluded from her or his rightful participation in the community because of mere chronological age. The arbitrariness of systemic discrimination stands in contradictory opposition to equality of opportunity.

It is of the nature of age discrimination that the person is treated not in a manner congruent with his dignity but rather is treated as simply a factor to be manipulated. The entire thrust of human rights is to challenge such treatment, it is a thrust that is based on the belief that there is no system, no operation, no organizational model, which is of a value that it can make man subservient to it. The human rights belief in the dignity of man concludes that social programmes, pension benefits or insurance schemes are to serve man not the other way around.

Age Discrimination and 'Bona Fide' Occupational Requirements

Realism and recognition of exceptions in the reality of the working world; are principles carefully provided for in the New Brunswick Human Rights Code. The Code places anti-age discrimination in the context of the work-a-day world, thus there are excepting provisions contained in the legislation based on 'bona fide' occupational qualifications.

The determination of B.F.O.Q. with reference to age is becoming a very prominent issue for human rights workers in Canada. The general direction for approaching this difficult problem was given by an important American decision: Hodgson v. Greyhound Bus Lines Inc. [(1974) 449 F 2d. 859, cert. denied, 95 S. Ct. 805 United States Court of Appeal, 7th Circuit.] In this case the Court was addressing the question of whether a bus company could use age as a B.F.O.Q., and suggested in its decision that in situations where public safety is involved, the burden of showing the existence of a reasonable occupational qualification should be less onerous than might otherwise be the case. The Court spoke about there being demonstrated a "natural basis in fact" for believing "that elimination of its maximum hiring age would increase the likelihood of risk of harm to its passengers..."

The important Canadian Boards of Inquiry in this matter are Derksen, Hadley, Hall and Little. In Derksen the board held that a B.F.O.Q. could exist where it can be shown that the public or other person might be adversely affected or harmed because the

very age of the employee might make it obvious he could not as safely perform his duties as would someone younger in age. This might be the case in certain types of hazardous employment where the safety of the employee himself was in question or in employment where the lives of the public were at stake and some special skill was required, for example, airline pilots or operators of motor vehicles. Once again, however, substantial evidence would have to be adduced by the employer to demonstrate the incapacity or reduced capacity was occasioned by the age of the employee.

In Hadley, the Board was considering the applicability of age to a B.F.O.Q. for firefighters and held that the respondent did not offer much evidence to substantiate the existence or the need for such a qualification. With reference to the Greyhound case, there an element of risk to the public was involved, whereas this was not demonstrated in the Hadley case.

In Hall, the Ontario Supreme Court, O'Leary, J. held that the determination of the existence of a B.F.O.Q. must be based on the "practical reality of the work-a-day world" and that detailed scientific data will not always be necessary and, of course, will not always be available.

In Hawkes v. Brown's Ornamental Iron Works of Belleview Ltd. (1977) Ontario, the Board held that in order to satisfy the proof for a B.F.O.Q. the employer must demonstrate that there are "sound reasons for the qualification".

Economic Benefit Programs at the Service of Persons, Not an Obstacle

The Human Rights thesis underscores the view that society and its systems, structures and programmes exist for the person. Since man is social by nature, the real test of any social or economic system in a free society is the degree to which such a system or programme serves the individual person. This is its reason for existence. A society, social institution or economic benefit programme that is not person-centered is, to that extent incongruent with human rights and social justice principles. The economy, for example, must be for the person, not the person for the economy. No matter how much an economy produces, or how fairly it distributes it, if it does not make the procedures themselves more human in the process, it is an unjust economy; it violates human rights.

The student of human rights would therefore underscore the point that employee benefit programmes should exist in order to assist the person, to be an aid, a subsidium, to the person in those areas where the person needs such aid. On the one hand the programme must not be more important than the person it is designed to aid, and on the other hand, if the programme goes too far, and begins to take over what the person can do for himself, then the principle of subsidiarity is damaged.

The New Brunswick Experience With Age Discrimination

Discrimination against older workers is not a new subject of concern for the New Brunswick Human Rights Commission. In 1973 New Brunswick was one of the first provinces in Canada to realize the principle of equality without regard to age and to legislate in this regard. Since that time, the Commission has been actively involved in combating age discrimination and promoting both equality of opportunity and equality of result for older workers. Three board of inquiry decisions which emanate from age discrimination complaints, and which address the issue of mandatory retirement are:

Mr. Charles Little v. Saint John Shipbuilding and Drydock Ltd.
(1979)

Geza Charles Kuun v. University of New Brunswick (1983)

Armand Buggie v. City of Moncton and Jeoff F. Greenough (1986)

Following the Little decision, a 1980 New Brunswick Industrial Inquiry Commission examined and made recommendations on retirement age policy, specific within the context of the New Brunswick Human Rights Act.

Despite the fact that society has generally placed a high value on the freedom of individuals and equality of opportunity, age discrimination based on chronological age still is very much in existence.

Age discrimination in employment have continued to form one of the top three categories of complaint before this Commission during the past 5-year period. The majority of those filed have dealt with discrimination against older workers. Although the

fact situations obviously vary, the types of complaints appear to center around the following two problems. Firstly, older members of our society encounter difficulties in finding employment and secondly, once employed, they must surmount opposition to retain that employment.

Discrimination against aged job seekers

Some employers simply refuse to hire older workers, arguing that the financial investment in training older workers cannot be justified, given the relatively short time period that they will remain in the work force. Interesting enough, the same arguments are used for refusing to hire young people.

Other age discrimination cases over the past five-year period have shown that some employers tend to make rather sweeping generalizations about the older workers' lack of ability to adapt in a changing technological environment. Furthermore, the elderly are presumed to be less flexible, less productive, have less training potential and limited work horizons in comparison to younger workers. While these opinions traditionally associated with the aging process have not been scientifically proven, employers fail to note more positive attributes that can associate with the older worker, in the nature of stability, dependability, accumulated knowledge and experience and consistent performance.

Several complaints centered around the pre-employment requirement of "younger persons preferred". Some employers were very overt in expressing their preference in this regard. Many application forms still request the applicant's date of birth or age.

One affected group in relation to pre-employment discrimination is the older woman who is attempting to re-enter the work force following a prolonged absence. Not only is she faced with the stereotyped notions which appear to abound regarding the older worker, she is also seen as a job seeker with no real employment experience. In a competitive job market, these two factors, when coupled together, can translate into a long period of unemployment. This situation is somewhat alleviated by retraining programs that are generally funded by C.E.I.C. and offered through institutions such as community colleges. The programs are designed to retrain women who wish to re-enter the workforce. However, based on first-hand information available, many of these women are confronted with age-related biases and discriminatory practices on the part of the employers.

Discrimination Against Aged Employees

An analysis of complaints indicates that older employees are frequently laid off just prior to reaching retirement. This Commission has also processed numerous cases where the employer has, in a calculated manner, radically altered a long-time employee's job description or increased the degree of difficulty

to such an extent that the employee can no longer perform the job. The psychological effects on the part of the employee are devastating.

A disproportionate number of older complainants have been dismissed due to "poor performance", when in fact, the employer simply preferred to have a younger worker.

There is also a category of complaint filed by older workers where the employer presumes the individual is incapable of carrying out the physical requirements of the job. While it is obvious that occupations require certain bona fide qualifications, employers must avoid the generalized approach in the selection and evaluation process, particularly in relation to the aging worker.

The obvious cause and effect relationship between age prejudice and discriminatory practices produces detrimental distinctions which do not take account of the particular characteristics of an individual as such, but take into account only collective qualifications deriving from his membership in a certain social or other group.

Chronological age is a "frailty" common to all, a physical characteristic over which one has little control. The problems of age discrimination are universal and applicable to every member of our society in that all have been at one time "too young" and most of us will become "too old".

Stereotyped ideas of an individual's capacity based on chronological age cannot provide a proper basis for classification or evaluation, and therefore leads to discriminatory practices.

Discrimination in accommodation, services or facilities:

As the demographics of Canadian society change, and the over age 50 population grows, we must examine the types and magnitude of services which will be required.

One obvious area of consideration is health care. The New Brunswick Medical Society concluded in a report entitled "The Elderly in New Brunswick: A Time for Redirection". It condemns the "warehousing" of elderly in institutions and recommends improved home care to allow the elderly to stay at home, new standards for entering nursing homes and a "single-entry" system for obtaining long-term health care.

These recommendations are particularly significant in a youth oriented society. This cultural prominence may have resulted in a passive institutional discrimination against the elderly. The role of the aged becomes more precarious since continued social ignorance of the elderly serves to perpetuate many of the myths and misconceptions concerning them.

In effect, these same misconceptions, often born from mere lack of interest in older members of society, serve to aid in the alienation of the chronological aged, from a system which they have been a part of all of their lives.

We must therefore closely examine our policies and services to ensure that they do not discriminate against the elderly. We must also educate ourselves to view this segment of our population as productive members of society.

Goals of Equal Opportunity

The goals of employment opportunity must remain a goal for the entire community and each of its members. This goal cannot be achieved by a system which by its nature denies categorically the right to work to a major sector of society. The emphasis must be ever on opportunity, and progressive steps need to be taken continually to expand that opportunity. The emphasis must never be in the opposite direction, not because we lack the technology for complete social engineering, which is the case, but rather because it underestimates the human resourcefulness and potential in all persons.

In 1974, the Economic Council of Canada stressed in its Eleventh Annual Review, that the basic goals for society were the well-being for individuals and equity among them.

"Each individual has certain needs, and these range from the most fundamental, such as survival, to the more complex psychological ones, such as self-realization. These needs are really the basic goals of individuals. From the point of view of society, these can be restated in terms of two basic goals - well-being and equity. All subsidiary objectives contribute to the attainment of these basic goals."

The degree of well-being is determined by the extent to which the material, socio-cultural, psychological, and other needs of society are met. Equity, on the other hand, is an

appropriate distribution of well-being among members of society. There are several views about what constitutes equity and how it might best be achieved. Among these, equality of opportunity has probably been, in principle, the most widely accepted approach to equity. This approach attempts to provide everyone with the same opportunity of access to well-being. Another view of equity, equality of results, has also come to receive a certain amount of attention.

These two goals are too general to provide specific guidelines for the formulation of policies. For this, more detailed divisions of the social system and their objectives must be defined. Nonetheless, these basic goals do provide the skeletal outlines of a broader framework for reviewing the ultimate ends of society's activities.

III. RACISM: The Major Social Problem to be addressed by the Canadian Human Rights Agenda in the 90's

Racism is the single most critical social issue that must be addressed by the Canadian Human Rights agenda in the 90's. If racism is not directly combatted, rooted out and totally eradicated from Canada, we shall have no chance at all of building a truly vibrant pluralistic Canada.

The problem of racism and racial discrimination has not received the level of attention of human rights agencies during the past few years as it did during the early years of human rights commissions in Canada, that is 1965-70. This is because of the diversion of the same level of funding to human rights issues such as ageism, handicapism and sexism.

The problems of racism and racial discrimination represents 25% of the case load of human right commissions, however the problem of racism has become more acute in recent years and commissions could devote 100% of their resources to combatting racism and racial discrimination if they didn't have to deal with the other areas of discrimination. In other words the level of support for human rights commissions by every government in Canada has not kept pace with the demands which are placed on the commissions by aggrieved persons.

1. Sample of Racial Discrimination Complaints

A random selection of racial discrimination complaints investigated by the New Brunswick Human Rights Commission during the past ten months gives an indication of the racism we confront:

- Complainant alleged she was unduly harassed as compared to her white co-workers.
- Complainant denied access to a club because he is Black.
- Black employee the brunt of racial slurs - "boy"

- Complainant alleged police officer treated her in an unfair manner while investigating a car accident.
- Complainant alleged she was fired because she was not a native.
- Complainant alleged he was denied employment because he is Black.
- Complainant alleged she was evicted from her apartment because her boyfriend was Black.
- Complainant alleged she was refused housing because her ancestors came from India.
- Complainant alleged he was refused accommodations - an apartment - because he is a Status Indian and he and his girlfriend were not married.
- Complainant alleged he was denied a job interview and an opportunity to complete an application form because he is Black.
- Complainant alleged she was denied the rental of a car because she is Indian.

2. Inter-Racial Group Conflict

There is one form of racism that human rights agencies need to be very vigilant of, that is the situation where one racial group either directly or indirectly assumes a domination position to the disadvantage of another racial group.

In the province of Ontario it is reported that the majority of respondents to complaints of racial discrimination are themselves members of ethnic communities. Some of the more serious inter-group conflict is that which has developed between certain ethnic groups. The cause of such a situation is no doubt multifaceted. Where a cause relates to the identity establishing efforts of the group, then we must reassess the dynamics operative in the selected format of group identity formation that has been chosen. Where a cause relates to religious or ethnic or national rivalries within the context of the place of origin of the given groups, then one needs to be reminded that the Canadian context requires a rejection of such rivalries or antipathies.

A greater emphasis needs to be placed on cultural exchange if the country is to truly benefit from the presence of so many cultures and racial groups existing in Canada.

3. Initiation of Inquiries into Racism

Given the problems of racism which might be group based rather than individual based the individual complaint process under most human rights legislation impedes the human rights commissions in combatting racism. What is required, is the authority for human rights commissions to be able to initiate complaints.

This provision would be particularly beneficial in situations where a class or group of people are involved. For example, the issue of hate literature is very much in the

forefront today. The commission would have the ability to conduct an all encompassing inquiry if it could initiate an investigation rather than wait for complaints to be filed by individuals of the race or ancestry involved. The commission's hands would not be tied by having to wait for complaints.

Another example is in a company town where there is a powerful, non-unionized company providing the majority of the town's employment. Racial discrimination may be rampant in the company but no one dares file a complaint because of the far reaching social and economic implications. The commission's ability to initiate a complaint or investigation would circumvent such situations.

Agencies such as Occupational Health and Safety Commissions are required by law to inspect worksites to ensure that working conditions are safe and healthy. Human rights commissions should have the power to ensure the working environment is poison free.

4. Institutional Discrimination

The most difficult task which presently is demanding the full attention of all Canadians of good will and specifically the human rights agencies is the problem of institutional discrimination. Institutional discrimination is that kind of discrimination which occurs because of the nature of operation of a given institution. A matter that has come to our attention in Fredericton illustrates what I mean by 'institutional discrimination'. A group of residents in an area of the City

voiced objections against the building of homes for Metis - Non Status Indians. The objection in part was based on the belief that the property value of the Whites would decrease if Metis people moved into that area. I do not accept the belief of these people that their property would decrease in value, however, if this did occur then clearly the Real Estate system would be operating according to a dynamic of racism. That is institutional discrimination.

With its roots buried deep in Canadian social history institutional discrimination makes many of our major institutions: real estate, business organizations, social clubs and associations, operate to the detriment or exclusion of racial minorities. Many of the people involved in the life of these institutions are unaware that their operating techniques and criteria for judgement are racist, sexist, in character and functionally discriminatory. In short what they do is motivated by racism, but it has the same effect.

5. Mandatory Affirmative Action

Institutional racism requires an institutional remedy. Often this remedy must be the implementation of an affirmative action programme. Human rights commission's should have the authority to mandate affirmative action programmes where warranted. For example Sections 7 and 10 of the Canadian Human Rights Act could be strengthened.

Contract Compliance is another important tool which should be used by governments to effectuate the abolition of racism from Canadian society.

6. Use of Licensing Authority of Governments to Combat Racism

Government licensing power might be one new area for state intervention in support of human rights goals. Institutional discrimination could be effectively challenged through the use of the Provinces' licensing power in public utilities, the service industry, and liquor control areas.

Consider for a moment the privilege to serve the public granted to a licensee under the Liquor Control Act. Should not a condition of such a license be an article of non-discrimination? Should not the principles of due process or natural justice apply to the licensee who take it upon themselves to bar individuals from their establishments? Surely, the right of a licensee to deal with the public is at least limited in the name of the right of the community to live in harmony. I suggest, that individuals who choose to enter the market-place through the commerce of lounges, taverns, beverage rooms, cabarets, and clubs, must respect legitimate community standards and expectations that cannot always await their agreement before demanding their compliance.

If a licensee or club entrepreneur fails to respect these standards, something more has happened than infringement of a rule. The community has been affronted. As Tarnopolsky stated

in *Amber v. Leder* (1969, n.49 at 9): "An act of discrimination does not give rise merely to a new private claim for compensation, it amounts to a public wrong". It is a rip in the fabric that binds society together. As such, those charged with the public interest will have the responsibility to respond effectively to that threat to the integrity of social harmony. The loss of a liquor license might be the appropriate sanction to those who make a racist or sexist affront to the human rights of society.

Presently the New Brunswick Human Rights Commission is studying this problem and has been meeting with other public agencies such as the Liquor Licensing Board and the Liquor Control Inspection Branch of the Department of Justice.

Dr. Dan Hill has written in Human Rights in Canada: A Focus on Racism

"Government licensing power should be used in support of human rights goals. It should be a condition of their licenses that "intermediary agencies" realtors, employment agencies - make available whatever records are necessary for commissions to determine whether agencies are discriminating on behalf of clients. Also, suspension or loss of a business license should be imposed as a possible penalty for violation of human rights legislation".

All the various public licensing bodies need to be scrupulous in their activities such that no form of indirect discrimination is allowed to occur. We must be careful in establishing uniform and fair standards for assessing the competence of foreign trained people who work in Canada. Those professions which regulate or influence the education opportunities for those who seek to study and prepare themselves for a career in the given profession, must be balanced in the application of restrictions applied on the basis of economic standards of the given profession. Indeed it could very well be that the public licensing bodies and the respective professions should be encouraged to develop affirmative action programmes for the minorities.

7. New Measures to Combat Racist Propaganda

The problem of racist or anti-semitic publications continues to be a problem in Canada. New Brunswick society has not escaped the disruption which such propaganda causes. It is particularly offensive when a person occupying a position of trust, such as a school teacher, publishes materials which misrepresents a racial or religious group. The material being circulated today is not only anti-Semitic and anti-Black, but it is also anti-Roman Catholic, anti-native persons and anti-French.

New measures are required to combat racist propaganda. It is possible to create such required new instruments and yet protect civil liberties, and principles of due process and natural justice.

The Criminal Code should be amended at Section 281.2(2) so that it is no longer necessary to show that a "mens rea" existed to promote hatred in publications.

The statutory defense provided for in terms of public intent, good faith and religious subjects should be removed from Section 281 of the Criminal Code. Human Rights Codes, federal and provincial, must be changed to provide human rights commissions with the authority and necessary measures to combat racist propaganda.

8. Declaration by Canada under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination

Canada's special or specific obligations under international law to combat all forms of racial discrimination are outlined in the International Convention on the Elimination of All Forms of Racial Discrimination.

Pursuant to Article 14 of CERD Canada could make a declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of Canadians.

Notwithstanding, the many recommendations made to the government of Canada that we should make such a declaration, including recommendation number 46 of the Special Committee of the House of Commons on Visible Minorities in Canadian Society, Canada has still failed to make such a declaration.

I would ask that the Standing Committee on Human Rights take steps to encourage the Government of Canada to declare under Article 14 of this important international instrument for the elimination of racial discrimination.

IV. HUMAN RIGHTS EDUCATION: CANADA IS FALLING BEHIND

Educating students in human rights presents a new challenge to educators and the education systems of contemporary society. The challenge is at once, one of innovating pedagogical methods to teach human rights, and equally one of effecting an acceptance by school authorities of the importance of teaching human rights in the schools. The goal of teaching human rights is fundamentally to promote an understanding and respect for human rights.

Why Human Rights Education

Human rights are the democratic expression of people respecting people because we are all human beings. The dignity and worth of the human personality is the basis of human rights, thus the human desire to live in dignity flows from the intrinsic worth and inestimable value of the human person.

If we are to expect that human rights, the dignity of the human person, and the principles of democracy are to be respected, then we need to develop and deliver programmes of human rights education. The tragic violations of human rights to which we are witness virtually daily provides a sharp statement on the urgency of human rights education.

However, human rights education in Canada is in a sorry state of development. We have fallen quite far behind countries such as France, Luxembourg, Switzerland and Australia.

The Council of Ministers of the Council of Europe had recommended to the Member States of the Council of Europe that Human Rights Education be included in the European school curriculum.

Effective this Spring, students in France who sit for their Baccalaurent Examinations must do an examination in human rights.

No where in Canada is there a formal direct requirement that human rights education be part of the school curriculum.

Why Teach Human Rights in Canadian Schools

There is a need for human rights to be taught in Canadian schools. This need exists in Canada from both a domestic standpoint and also from an international standpoint. It is important to underscore the need for Canadians to learn of both the international human rights standards as well as the rôle Canadians should play because of our solidarity with the peoples of the world. As members of the world community the school must

teach not only reading, writing and arithmetic, but rather must also teach Canadians how "to live together" with all who share the earth. In the words of Jacques Muhlethaler, founder of the World Association for the School as an Instrument of Peace, "The school has to make each individual a world citizen, aware of his rights and duties, and above all, capable to live up to them."

From a domestic point of view, one reason why Canadian educators must meet the obligation to teach human rights is because of the Canadian Charter of Rights and Freedoms and in particular Article 33 of the Charter.

Article 33 provides as follows:

"33.(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4)."

The availability of this 'non obstante' or 'notwithstanding' provision means that legislators could enact laws irrespective or even contrary to human rights guarantees contained in the Charter. However, legislators will best be impeded from doing such if they are aware that an informed Canadian public will not accept the holding in abeyance of human rights. An informed Canadian public has become therefore the ultimate defender and promoter of human rights in Canada. It is therefore clear that human rights education must be such that Canadians become fully aware of the nature of human rights, the instruments of human rights such as human rights codes and the Charter as well as the responsibility that Canadians individually and collectively have to protect human rights domestically and internationally.

The Obligation for Human Rights Education

A number of international legal instruments impose a positive obligation upon states in the field of human rights education.

The Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on December 10, 1948, and which is recognized as forming part of the customary law of Nations, make special mention of human rights education.

Article 26(2):

"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote

understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."

State parties to the International Convention on the Elimination of All Forms of Racial Discrimination have assumed a very specific obligation for human rights education.

Article 7:

"States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention,"

The International Covenant on Economic, Social and Cultural Rights imposes a direct obligation for human rights education on States Parties.

Article 13(1):

"The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Content of Human Rights Teaching

The content of human rights teaching should be guided by the human rights which are universally acknowledged and as proclaimed in the most important international and domestic instruments in the field of human rights.

Secondly, the local, national, regional and international systems concerning human rights, their structure and operation, need to be studied.

Thirdly, the content of human rights teaching can be developed by a study of the experience of different countries in solving socio-economic, political, legal and other problems in terms of how countries have taken steps to ensure the effective exercise of human rights. In this regard it is important for learning that the student be open to appreciate the contribution of various cultures and peoples.

The content of human rights teaching needs to take into account not only human rights issues on which there is general public agreement or consensus, but also must address those areas of conflict concerning human rights.

It is important that human rights teaching deal with the fact that notwithstanding universally accepted standards of human rights, human rights issues are often understood differently according to different social and cultural contexts.

Context of Human Rights Teaching

Human rights teaching must occur in formal as well as informal systems of education.

In the formal school system, one needs to develop programmes at the elementary, intermediary and secondary levels, as well as at the post-secondary level. Equally important will be the development of programmes for special needs students as well as including human rights into literacy programmes.

In the non-formal settings, one can see that human rights education should be provided to civil servants working in the various branches of public administration and, in particular, for those working in the justice delivery system.

Some Methodological Principles for Human Rights Education

The understanding of human rights, knowledge in this field, is only acquired gradually, and this through a mixture of concrete activities and reflection. It is by means of both practical experience and speculative discernment that we learn of the content of human rights, beginning with human rights as experienced in the real world and then seen elaborated in the course of history. The learning of human rights is meaningful where the learning flows from a situation wherein human rights can be practical and learned successfully by the child, and adolescent, and adult in relation to their respective physical and mental development. In this sense, the individual will develop a

level of behaviour and reflection in accordance with ones development resulting in a personal decision for one's conduct as opposed to being imposed from outside.

However this real life awareness, reflection, desire, does not develop without some recourse to knowledge, to exercises organized by the school, through the means of lessons. One requires a systematic process of analysis and synthesis which leads each student to examine his or her own conduct, individually or as a group, or co-operatively.

One first principle which needs to be underscored in treating the question of methodologies for teaching human rights is that one must take into account the age, training level, and the professional orientation of the students.

A second principle is that human rights education programmes should display: education in human rights and for human rights through access to knowledge, school life, curricular and extra-curricular activities, matching programmes or specific methodologies for their implementation. The approach needs to be pluridisciplinary, taking into account the multi-ethnic and pluri-cultural character of societies, stressing the interrelationships between rights of peoples (*ius gentium*) and human rights, as they are defined in existing universal human rights instruments.

A third methodological consideration is to ensure that the textbooks being used in the schools are free from all racial discrimination.

Research on Human Rights Education

A great deal of work needs to be done in the area of research on human rights education and on methods of human rights teaching.

Comparative research on the methods of human rights education needs to be undertaken. Such comparative research would be greatly enhanced through the promotion of teacher and student exchanges.

Pedagogical research needs to be encouraged as does the preparation of written and audiovisual materials for wide distribution.

Integrative overview study of existing research in the social sciences should be carried out in order to explicitly identify the relevance of such research for the study and promotion of human rights even when human rights have not been mentioned as part of the paradigm of the original research.

Bibliographic research must continue.

One content area for human rights research is the effect of social and economic rights on the enjoyment of individual rights.

Linkages for Human Rights Education

It has been argued that one needs to highlight the relationship between education for human rights on the one hand, and education for peace and international understanding on the other. According to a 1974 UNESCO Resolution, human rights education is an integral part of international education.

Another interesting area of linkage for human rights education is that of conflict-resolution studies. It has been suggested that one needs to promote the teaching of non-violent alternatives and strategies for the peaceful resolution of conflicts, and encourage the drawing up of history and civics programmes and manuals in a human rights perspective.

Linkages need to be strengthened between the study of problems associated with the development of relations between science and technology on the one hand, and respect for human rights on the other.

The development of multicultural education programmes provides a natural linkage with human rights education, especially in the area of minority rights, non-discrimination and equality rights.

A further linkage for human rights education is the field of global education. Development of curricula for global education helps the student to appreciate both the nature of the world community and the differences which exist between different societies.

Holocaust studies is linked to human rights education. Indeed holocaust studies provides important material in the area of case studies of human rights violations.

Finally, the general fields of civics education has important linkage with human rights education whether the method of presentation is in distinct courses or throughout the various disciplines.

Human Rights Education as a Branch of Knowledge

One can examine the teaching of human rights in terms of human rights education being the study of a distinct discipline or branch of knowledge.

In human rights education, the formal cause is the idea of human rights as a branch of knowledge. As a discipline, a science of human rights, as is psychology, physics, humanities, history. The notion of human rights as a body of knowledge. Human rights is a body of knowledge. René Cassin provided the following definition of human rights as a body of knowledge: "the science of human rights is a particular branch of the social sciences, having as its object of study, human relations in terms of human dignity, determining the rights and faculties which together are necessary for the growth and development of every human being."

In addition to the idea of a science of human rights as a formal course, the material cause of human rights education is the matter of human rights. It is here, of course, that one asks the question, what are human rights? The answer to this question is, quite paradoxically, sometimes quite simple, and sometimes quite complex. It is something like the question in religious studies, who is God? does God exist? Or in jurisprudence, what is justice?, what is law? At once these are simple questions, and yet very complex.

Notwithstanding this situation, disciplines or sciences of religious studies, jurisprudence or psychology, are pertinent areas of research, and of teaching. So it is that the teaching of human rights is a discipline, with its own material content.

To give an experiential answer to that same question, as to the material object of human rights, some answer that human rights means people respecting people. Or another response is that human rights are the rights provided for by the Universal Declaration of Human Rights and the International Covenants. Indeed, one of the marvels of the Universal Declaration of Human Rights, is that the whole world community, notwithstanding a variety of political ideologies and philosophies, was able to agree on a common standard and statement as to what are human rights.

The efficient cause of human rights education includes the teachers and the students who are addressing matters of human rights. Human rights education basically is that which enables educators to make both a professional and a personal contribution to the struggle to transform society. In this undertaking one is engaged in two processes of change: one, an attempt to change ourselves, to conform to the need of creating a more humane society; and two, to work toward the structural changes that are needed on an ongoing basis. Human rights education is a way by which the two -- personal involvement of teachers and students, and the structural dimensions -- coalesce.

The final cause of human rights education is a free and democratic society, a society that is transformed, a society wherein people may be free to express their differences and their communality, and to be able to do this without fear of oppression.

